

104TH CONGRESS
2D SESSION

S. 1724

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 1996

Mr. THOMAS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require that the Federal Government procure from the private sector the goods and services necessary for the operations and management of certain Government agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom from Govern-
5 ment Competition Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 Congress finds and declares that—

1 (1) private sector business concerns, which are
2 free to respond to the private or public demands of
3 the marketplace, constitute the strength of the
4 American economic system;

5 (2) competitive private enterprises are the most
6 productive, efficient, and effective sources of goods
7 and services;

8 (3) Government competition with the private
9 sector of the economy is detrimental to the American
10 economic system;

11 (4) Government competition with the private
12 sector of the economy is at an unacceptably high
13 level, both in scope and in dollar volume;

14 (5) current law and policy have failed to ad-
15 dress adequately the problem of Government com-
16 petition with the private sector of the economy; and

17 (6) it is in the public interest that the Govern-
18 ment establish a consistent policy to rely on the pri-
19 vate sector of the economy to provide goods and
20 services necessary for or beneficial to the operation
21 and management of Government agencies and to
22 avoid Government competition with the private sec-
23 tor of the economy.

1 **SEC. 3. PROCUREMENT FROM PRIVATE SOURCES.**

2 (a) GENERAL RULE.—Notwithstanding any other
3 provision of law, except as provided in subsection (b), each
4 agency shall obtain all goods and services necessary for
5 or beneficial to the accomplishment of its authorized func-
6 tions by procurement from private sources.

7 (b) EXCEPTIONS.—Subsection (a) does not apply to
8 the following goods and services required by an agency:

9 (1) Goods or services that are required by a law
10 enacted after the date of the enactment of this Act
11 to be produced or performed, respectively, by the
12 agency.

13 (2) Any goods or services for which the head of
14 the agency determines and certifies to Congress in
15 accordance with regulations promulgated by the Di-
16 rector of the Office of Management and Budget
17 that—

18 (A) it is necessary in the interests of na-
19 tional security that the Government produce,
20 manufacture, or provide the goods or services;

21 (B) the goods or services are so inherently
22 governmental in nature that it is in the public
23 interest to require production or performance,
24 respectively, by Government employees; or

1 (C) commercial practices are not sufficient
2 to satisfy unique requirements of the agency for
3 the goods or services.

4 **SEC. 4. PROCUREMENTS FROM STATE AND LOCAL GOVERN-**
5 **MENTS.**

6 In any case in which the head of an agency deter-
7 mines that goods or services required by the agency are
8 so inherently governmental in nature that it is in the pub-
9 lic interest to require production or performance, respec-
10 tively, by Government employees, the head of the agency
11 shall determine whether the requirements of the agency
12 for such goods or services can be satisfied by a State or
13 local government and, if so, shall attempt to procure the
14 goods or services from that source.

15 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

16 (a) REGULATIONS.—

17 (1) IN GENERAL.—The Director of the Office of
18 Management and Budget shall promulgate such reg-
19 ulations as the Director considers necessary to carry
20 out sections 3 and 4.

21 (2) EMPHASIS ON PROCUREMENT FROM PRI-
22 VATE SOURCES.—The regulations shall emphasize
23 the preference set forth in section 3 for procuring
24 goods and services from private sources.

1 (b) OVERSIGHT.—The Director of the Office of Man-
2 agement and Budget and the heads of agencies shall vigor-
3 ously monitor the compliance of agencies with the require-
4 ments of this Act and report to Congress any significant
5 failure of an agency to comply with any such requirement.

6 **SEC. 6. STUDY AND REPORT.**

7 (a) STUDY.—The Director of the Office of Manage-
8 ment and Budget shall carry out a study to identify all
9 activities of agencies that are inconsistent with the re-
10 quirements of section 3.

11 (b) REPORT.—

12 (1) REQUIREMENT.—The Director shall trans-
13 mit a report on the study to Congress within one
14 year after the date of enactment of this Act.

15 (2) CONTENT.—The report shall include a list
16 of all procurement activities identified by the study
17 and a schedule for the transfer of such activities to
18 the private sector of the economy. The schedule in-
19 cluded in the report shall provide for the completion
20 of the transfer within five years after the date on
21 which such report is transmitted to Congress.

22 (c) COORDINATION WITH COMPTROLLER GEN-
23 ERAL.—The Director—

24 (1) shall coordinate the study under subsection

25 (a) and the preparation and transmittal of the re-

1 port under subsection (b) with the Comptroller Gen-
 2 eral of the United States; and

3 (2) in preparing the study, shall obtain rep-
 4 resentative views of the private sector.

5 **SEC. 7. DEFINITIONS.**

6 (a) AGENCY.—As used in this Act, the term “agency”
 7 means—

8 (1) an executive department as defined by sec-
 9 tion 101 of title 5, United States Code;

10 (2) a military department as defined by section
 11 102 of such title; and

12 (3) an independent establishment as defined by
 13 section 104(l) of such title.

14 (b) INHERENTLY GOVERNMENTAL SERVICES.—(1)
 15 For the purposes of section 3(b)(2)(B), services constitut-
 16 ing the performance of an inherently governmental func-
 17 tion shall be considered inherently governmental services.

18 (2)(A) For the purposes of paragraph (1), a function
 19 shall be considered an inherently governmental function
 20 if the function is so intimately related to the public inter-
 21 est as to mandate performance by Government employees.
 22 Such functions include activities that require either the ex-
 23 ercise of discretion in applying Government authority or
 24 the making of value judgments in making decisions for
 25 the Government, including judgments relating to monetary

1 transactions and entitlements. An inherently governmental
2 function involves, among other things, the interpretation
3 and execution of the laws of the United States so as to—

4 (i) bind the United States to take or not to take
5 some action by contract, policy, regulation, author-
6 ization, order, or otherwise;

7 (ii) determine, protect, and advance its eco-
8 nomic, political, territorial, property, or other inter-
9 ests by military or diplomatic action, civil or crimi-
10 nal judicial proceedings, contract management, or
11 otherwise;

12 (iii) significantly affect the life, liberty, or prop-
13 erty of private persons;

14 (iv) commission, appoint, direct, or control offi-
15 cers or employees of the United States; or

16 (v) exert ultimate control over the acquisition,
17 use, or disposition of the property, real or personal,
18 tangible or intangible, of the United States, includ-
19 ing the control or disbursement of appropriated and
20 other Federal funds.

21 (B) For the purposes of paragraph (1), inherently
22 governmental functions do not normally include—

23 (i) gathering information for or providing ad-
24 vice, opinions, recommendations, or ideas to Govern-
25 ment officials; or

1 (ii) any function that is primarily ministerial or
2 internal in nature (such as building security, mail
3 operations, operation of cafeterias, housekeeping, fa-
4 cilities operations and maintenance, warehouse oper-
5 ations, motor vehicle fleet management and oper-
6 ations, or other routine electrical or mechanical serv-
7 ices).

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